

REMARKS/ARGUMENTS

In response to the office action dated May 15, 2009, having a shortened statutory period for response set to expire August 15, 2009, Applicant respectfully requests the Examiner to reconsider his rejection for the reasons set forth hereinbelow.

The Examiner has rejected claim 51 under 35 U.S.C. 112, second paragraph, as being indefinite. The Examiner asserts that the claim is indefinite as claim 51 sets forth that the preparation is free of wax, fat and oil while the independent claim 33 from which it depends requires "volatile silicone oil". Applicant submits that the Examiner is in error. Claim 33 does not require volatile silicone oil as asserted by the Examiner. To the contrary, claim 33 sets forth "at least one volatile silicone". In this regard, the Examiner's attention is drawn to paragraphs [0049] and [0050] of the substitute specification. Accordingly, the Examiner is requested to reconsider his rejection of dependent claim 51 under 35 U.S.C. 112, second paragraph.

The Examiner rejected independent claim 33 under 35 U.S.C. 102(b) as being anticipated by Leverett, U.S. 6,132,739. Applicant respectfully requests the Examiner to reconsider this rejection for the reasons set forth hereinbelow.

Independent claim 33 is drawn to a preparation comprising an emulsified phase in an aqueous phase. Specifically, claim 33 sets forth a preparation "comprising an emulsion having an aqueous phase ... and an emulsified phase...". The prior art reference to Leverett, '739, is drawn to a water-in-oil emulsion. Thus, the '739 patent cannot anticipate the preparation of claim 33. In this regard, the Examiner's attention is drawn to paragraphs [0049], [0051] and [0036] of the instant specification. In light of the foregoing, it is

respectfully submitted that the Examiner's rejection of claim 33 under 35 U.S.C. 102 is without merit and should be withdrawn.

With regard to independent process claim 62, the same argument made above with the Leverett reference is incorporated herein by reference. The secondary reference to Hanna et al., U.S. 5,879,668, fails to cure the deficiencies of the primary reference. The secondary reference to Hanna et al. likewise deals with a water-in-oil emulsion. Accordingly, the rejection of claim 62 under 35 U.S.C. 103 as being obvious over Leverett in view of Hanna et al. is improper and should be withdrawn.

In light of the foregoing, it is submitted that all of the claims of the instant application patentably define over the applied prior art references and the early issuance of a formal notice of allowance is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,

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